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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	MM Docket No. 97-234
of the Communications Act	)	
— Competitive Bidding for Commercial	)	
Broadcast and Instructional Television	)	
Fixed Service Licenses	)	
	)	
Reexamination of the Policy Statement	)	GC Docket No. 92-52
on Comparative Broadcast Hearings	)	
	)	
Proposals to Reform the Commission's	)	GEN Docket No. 90-264
Comparative Hearing Process to	)	
Expedite the Resolution of Cases	)	

To: The Commission

COMMENTS

SL Communications, Inc. ("SL"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby files these Comments in response to the Notice of Proposed Rulemaking, FCC 97-397, released November 26, 1997 ("NPRM"). In support thereof, SL states as follows.

1. Among the policies being considered in this rulemaking are procedures for the handling of comparative broadcast licensing cases. These are cases where all of the mutually exclusive applications were filed prior to July 1, 1997. In adopting a policy in Section 309(l) of the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997), that comparative broadcast licensing cases would be decided by competitive bidding, the Congress also included a proviso, in Section 309(l)(3), that the Commission was to allow a 180-day period, before the competitive

bidding rules came into operation, in which agreements could be entered into which would procure the removal of conflicts among applicants. These Comments are intended to address how the Commission carries out this directive and, in particular, deals with the use of "white knights" to reach such resolutions of cases.

2. SL has a particular interest in the procedures for resolution of application conflicts. It is itself a "white knight" and fully supports the Commission's statement at Paragraph 26 of the NPRM:

> In this regard, we note that, in order to facilitate full-market settlements among pre-July 1 applicants, consistent with the congressional policy underlying section 309(l)(3), we are inclined to waive our policy against 'white knight' settlements involving the award of a permit to a non-applicant third party (citation omitted).

SL believes that this statement of policy is entirely correct and it urges the Commission to expand upon the decision and, in its final rules, adopt an unequivocal policy that in all proceedings involving pre-July 1, 1997 applicants, the Commission encourages the use of "white knights" to resolve contested cases and will grant its approval to all settlements where the proposed permittee is a "white knight" otherwise qualified under Sections 308 and 309 of the Communications Act of 1934, as amended.

3. The proceeding that SL is party to points to the benefits of such a policy. In 1985, nearly 13 years ago, three parties applied for a construction permit for a new UHF television station on Channel 52 at Blanco, Texas. This proceeding (MM Docket No. 85-269) has been litigated for over 10 years without final resolution. During that time, one applicant was dismissed for failure to prosecute her application and another was denied for misrepresentations it made to the Commission. The final applicant, Dorothy O. Schulze and Deborah Brigham, a General

Partnership ("DSDB"), was disqualified on grounds of misrepresentation, but has been contesting the decision, thereby preventing it from becoming final and non-reviewable.

4. Recognizing that a final determination that DSDB was not qualified to be a permittee would end the Blanco proceeding was a major concern to SL. SL desires to provide new television service to serve the needs and interests of the people residing in Blanco and the surrounding areas. In fact, SL is owned by experienced broadcast professionals with a particular knowledge of broadcasting in the state of Texas and in Spanish-language broadcasting. These principals have recognized that the broadcast market in which Blanco is located is one of the few in this country with a significant Hispanic population and no full-power Spanish-language television station. SL is ready, willing and able to provide such Spanish-language service.

5. However, if DSDB's application is dismissed, there will never be a Channel 52 at Blanco and no service whatsoever to the unserved Hispanic population. In the Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996), the Commission proposed a Table of Allotments for the implementation of digital television ("DTV"). In order to achieve the DTV Table, the Commission sought out all available spectrum, including what it determined was unused spectrum. Among the unused spectrum was Channel 52 at Blanco, which has now been removed from future use at Blanco[1] Thus, there will be no ability for any other party to seek a construction permit at Blanco and this community, which was authorized a new station long ago, will lose its first and only television voice. This is unfair to the people of Blanco who the

[1] SL has filed a timely Petition for Reconsideration requesting that Blanco not be excluded from the DTV Table of Allotments

Commission has promised a television station and SL, for one, has sought to prevent this from occurring.

6. SL's response has been to enter into an agreement with DSDB. By that agreement, SL has asked that the Commission substitute it for DSDB as the applicant and be awarded the construction permit. In turn, SL will reimburse DSDB in the amount of $226,854.00, which represents the reasonable and prudent expenses DSDB has incurred to prosecute its application over these long years. More importantly, by the award of the construction permit to SL, a new television station will finally be built at Blanco. While the amendment has been denied,[2] SL has sought timely reconsideration and expects that the Commission, taking into consideration the policies established in this rulemaking, will reconsider its erroneous decision and award the construction permit to SL.

7. The Commission has dealt with the question of "white knight" settlements in the past. In its consideration of the matter, the Commission did want to establish a formal policy allowing for "white knight" settlements. Thus, in Rebecca Radio of Marco, 65 RR 2d 1408 (1989), modified, 67 RR 2d 574 (1990), recon. denied, 67 RR 2d 1154 (1990), the Commission, first approved a "white knight" settlement but then, on reconsideration, changed its mind. The reasoning in doing so was that since the comparative hearing was only at the pre-hearing stage, this would establish a precedent for future parties to use "white knights" at any point in the hearing process. Later, in its decision in James U. Steele, 67 RR 2d 1627 (1990), the Commission granted a "white knight" settlement in a case that had been pending for over 10 years. Given that

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[2] Dorothy O. Schulze and Deborah Brigham, a General Partnership, FCC 97-22, released February 28, 1997.

few cases had such long histories, the Commission concluded that Steele would not serve as a viable precedent for other applicants.

8. Of course, all of these issues are now moot. With the enactment of Section 309(l), there will no longer be comparative hearings. There is no need to worry about the precedential impact of a "white knight" policy. In fact, a "white knight" policy is now to be supported since it can serve to resolve these outstanding cases, bringing litigated matters to a close and providing for a party this is ready, willing and able to build the new station. SL submits that the ability to use a "white knight" policy should be applied to each and every case where all of the remaining applicants are pre-July 1, 1997 parties. There should be no reason to distinguish among parties based on any factors involving the participants. If there is a proceeding and a qualified "white knight" is willing to resolve the proceeding, that "white knight" must be awarded the construction permit. This policy must extend to the Blanco proceeding and any others that may be similar in nature.

9. Section 309(l) will bring to an end the long history of the FCC's comparative selection of new broadcast permittees. As part of the process, all unused channels with pre-July 1 parties must be part of the process, without the Commission giving consideration to the status of the parties are in the proceeding. If a "white knight" comes along, and is qualified to be a permittee, that "white knight" should be awarded the permit so long as the case is in existence and has not been closed in a final and non-reviewable decision. If the rules are to be waived, as the Balanced Budge Act requires, it should involve a process that is described in the NPRM:

> [The Commission] will look favorably on requests to waive certain policies in hearing cases where such waiver is necessary to facilitate settlements....

The policy goal has to be to reach the maximum number of settlements possible and to place in operation as many new broadcast stations as possible. Since a "white knight" policy for all cases will achieve this, it should be adopted and applied to all pending cases, including the Blanco case.

Respectfully submitted,

SL COMMUNICATIONS, INC.

By:_____

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